APPENDIX

APPENDIX A

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT

JULY TERM, A.D. 1968

FRIDAY, DECEMBER 13, 1968

CASE NO. 68-349

EDMOR PROPERTIES, INC., a Florida corporation,
Appellant,

vs.

METROPOLITAN DADE COUNTY, FLORIDA,
a governmental sub-division of the State of Florida,
Appellees.

Opinion filed December 17, 1968.

An Appeal from the Circuit Court for Dade County,

Martin Sack, Judge.

Carvajal & Lieberman and George D. Gold, for appellant.

Thomas C. Britton, County Attorney, and H. Jackson Dorney, Assistant County Attorney, for appellees.

Before CHARLES CARROLL, C.J., and HENDRY and SWANN, JJ.

PER CURIAM.

Affirmed.

APPENDIX B

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT

JANUARY TERM, A.D. 1969

FRIDAY, JANUARY 17, 1969

CASE NO. 68-349

EDMOR PROPERTIES, INC., a Florida corporation,
Appellant,

vs.

METROPOLITAN DADE COUNTY, FLORIDA,
a governmental sub-division of the State of Florida,
Appellee.

Counsel for appellant having filed in this cause petition for rehearing, and same having been considered by the court which determined the cause, it is ordered that said petition be and it is hereby denied.

A True Copy

ATTEST:

WILLIAM L. CARTER
Clerk District Court of Appeal,
Third District

cc: Pozen, Gold & Gold
H. Jackson Dorney
/h

(THE MANDATE IN THE ABOVE STYLED CAUSE HAS TODAY BEEN ISSUED AND MAILED TO THE CLERK OF THE CIRCUIT COURT IN AND FOR DADE COUNTY, FLORIDA)



APPENDIX C

Sec. 18-3. Proceedings for creation and establishment of districts.

The proceedings for the creation and establishment of a district under the provisions of this article shall be as follows:

(a) *Petition.* There shall be filed with the clerk of the board a petition requesting the creation and establishment of a special taxing district under the provisions of this article, signed by the planning director or by fifty per centum (50%) of the resident owners of property embraced within the proposed district. Opposite each such signature of owners of property there shall be inserted his post office address and a brief reference to the property within the proposed district which is owned by such signer, and such reference shall be sufficient to identify any property involved and shall set forth the folio number of the county tax bill covering such property. For the purposes of any such petition of owners of property, the rights of mortgagees and lienors shall not be considered and the signature of any person holding a fee interest in the property shall be sufficient, and either the signature of the husband or the wife shall be sufficient in cases where the property is owned by both husband and wife. In addition to the foregoing such petition shall also contain and set forth the following:

(1) The boundaries or other description sufficient to identify the property embraced in the proposed district, together with a survey sketch showing the location of the proposed district, and

(2) A brief description of the project requested to be constructed, acquired, reconstructed or installed.

(b) *Certification of petition.* Upon receipt of any such petition, the clerk of the board shall transmit a copy thereof to the county manager, who shall examine the petition and file a written report with the clerk at the earliest practicable date.

(c) *Investigation by county manager.* If the county manager finds that the petition has been properly presented in accordance with the requirements of this article, he shall cause to be made under his supervision and direction such investigations, surveys, plans and specifications as may be necessary to enable him to compile and file with the board a written report and recommendations setting forth the following data and information:

(1) The boundaries or other description sufficient to identify the property to be embraced in the proposed district as set forth in the petition, together with any recommendations as to any territory within the proposed district that should be excluded from the district because of the dispropor-

tionate cost of providing for such territory the project petitioned for, or for any other reason, and any recommendations for the inclusion of any additional territory within the proposed district;

(2) The location of the project to be constructed, acquired, reconstructed or installed within the proposed district;

(3) An estimate of the cost of such project;

(4) An estimate of the annual expense to be borne by the district or the county of maintaining, repairing and operating such project, and his recommendations concerning service charges and the levy of special assessments for (sic) pay all or a part of such expense;

(5) Whether the proposed project and the proposed special taxing district conform to or conflict with the master plan of development for the county;

(6) His recommendations concerning the need and desirability for the requested project, the ability of the affected property to pay special taxes or to bear special assessments or both, and his opinion as to whether or not (i) all lots and parcels within the proposed district which are to be taxed or specially assessed will be specifically benefited by the proposed project, (ii) any prop-

erty which would be specially benefited by such project is not included in such district, and (iii) each lot or parcel in such district which is to be taxed or specially assessed will be specially benefited by such project in excess of the amount of such special taxes and special assessments to be levied thereon;

(7) If his recommendations under clause (6) are favorable to the creation of the requested special taxing district, his recommendations as to the levying of any special assessments against the benefited property, and an estimate of the amount to be assessed against each front foot or other unit of benefited property; (sic)

The county manager shall file such written report and recommendations, accompanied by an appropriate map and other pertinent data, with the clerk of the board at the earliest practicable date. Upon receipt of such report, the clerk shall immediately transmit a copy thereof to the mayor of the county.

(d) *Notice of public hearing.* If it shall appear to the board from such report of the county manager, and from such other investigations as the board may make or cause to be made, that the project petitioned for would be of special benefit to all property within the proposed district and that the total amount of the special taxes and special assessments to be levied would not be in excess of such special benefit, the board shall adopt a resolution fixing the place, date and

hour for a public hearing, which resolution shall set forth a copy of the petition, excluding signatures, and brief summaries of the report and recommendations of the county manager, including (but without limitation) his recommendations as to any additional territory which should be embraced within the proposed district. Notice of such public hearing, stating that a petition for the creation and establishment of a special taxing district under the provisions of this article has been filed with the clerk of the board and setting forth a brief description of the project petitioned for, the boundaries or other description sufficient to identify the property to be embraced in the proposed district, a brief summary of the report and recommendations of the county manager, the findings of the board as to special benefits and the lots and parcels to be specially assessed, and stating the place, date and hour fixed by the board for such public hearing, shall be:

(1) Published once a week for two consecutive weeks in some newspaper of general circulation within the county to be designated in the resolution;

(2) Posted in not less than five (5) public places within the proposed district;

(3) Mailed to all owners of taxable property within the boundaries of the proposed district, including any additional territory recommended by the county manager, whose names and addresses appear on the last preceding assessment roll for county taxes.

The first of such publications and such posting and mailing shall occur not less than fifteen (15) days prior to the date fixed for such hearing.

(e) Public hearing. At the time and place stated in such resolution, or to which an adjournment may be taken by the board, the board shall receive and hear objections of interested persons to the creation and establishment of the proposed district, the property to be embraced within the district, the project to be acquired, constructed, reconstructed or installed, or the levy of any special taxes or special assessments therefor, or to any defect in the petition or the proceedings theretofore taken, or which question any of the powers of the board under the provisions of this article, and the board may then or thereafter grant such petition with such modifications, if any, as it may deem advisable and which do not enlarge the boundaries of the district as set forth in the resolution mentioned in subdivision (d) of this section or change the general type or character of the project. All such objections shall be in writing, in person or by attorney, and filed with the board at or before the time or adjourned time of such hearing. Any objections not so made shall be considered as waived.

(f) *Resolution establishing district.* If the board shall, after such hearing, determine to grant the petition, either with or without modification, it shall adopt a resolution reciting the proceedings theretofore taken and providing for the creation and establishment of the district. Such resolution shall also set forth the following:

(1) The name or designation by which the district shall be known, such as "..... Special Taxing District in Metropolitan Dade County, Florida" or "Special Taxing District No. ..... in Metropolitan Dade County, Florida", or such other appropriate name as the board may determine.

(2) The boundaries of the district, or other description sufficient to identify the property to be embraced in the proposed district;

(3) A brief description of the project which is to be acquired, constructed, reconstructed or installed in the district;

(4) A declaration as to benefits and what part, if any, of the cost of the project is to be specially assessed; and

(5) A statement as to the method of financing, including estimates of:

(a) The amount of bonds of the district, if any, to be issued as hereinafter provided to pay the cost of the project,

(b) The amount required annually to be borne by the district or the county to pay the cost of maintaining, repairing and operating the project, and what percentage, if any, of such amount shall be specially assessed, and

(c) The amount, if any, to be derived annually from service charges or special assessments on benefited property or both.

Such resolution shall order the acquisition, construction, reconstruction or installation of the project under the provisions of this article upon moneys being made available therefor and shall set forth the location of the project and a description thereof by its material, nature, character and size. Such resolution may give any short and convenient designation to the project ordered thereby. Such resolution shall also set forth what part, if any, of the cost of the project which shall be borne by the special taxing district at large, the balance of such cost to be specially assessed.

If the board shall be of the opinion that, in lieu of the issuance of bonds as herein provided, an annual tax should be levied upon all property in the district subject to county taxation or that special assessments should be levied under the provisions of paragraph (17) of section 18-14 of this article, in order to furnish the services and facilities to be provided by the project for which the district is created, such resolution shall set forth the maximum amount of such annual tax not exceeding ten (10) mills on each dollar of the assessed valuation of such property, excluding that portion of the valuation of such property which is subject to homestead exemption, or shall set forth what part of the cost of maintaining, repairing and operating

the project shall be specially assessed in each year and the basis of the apportionment.

If the method of financing a project which is set forth in the resolution adopted under the provisions of this subsection creating and establishing a district shall be other than the issuance of bonds of the district under the provisions of sections 18-5 and 18-6 of this article or the levy of taxes under the provisions of section 18-7 of this article, the board shall provide that the resolution creating and establishing the district shall take effect when approved by a majority of the freeholders who are qualified electors residing in the district voting at an election to be called by the board and noticed and conducted and the result thereof determined and declared either in the manner provided for the issuance of bonds of a district or in such other manner, by mailed ballot or otherwise, as the board shall by resolution determine, provided, however, that in the event the proposed district shall encompass both unincorporated and incorporated areas of the county, then and in that event, the resolution creating and establishing the district shall take effect when approved by a majority vote of the freeholders who are qualified electors residing in the unincorporated area and also a majority vote of the freeholders who are qualified electors residing in each incorporated area in the district voting at an election to be called by the board and noticed and conducted and the results thereof determined and declared either in the manner provided for the issuance of bonds of a district or in

such other manner, by mailed ballot or otherwise, as the board shall by resolution determine, provided, further, that nothing contained in this paragraph shall affect the validity of any district heretofore created and established under the provisions of this article.

(g) Notwithstanding any of the foregoing provisions of this article a district may be created and established under the provisions of this article for the combined purpose of acquiring, constructing, reconstructing or installing both a water system and a sewerage system, and as applied to a district so created and established, the word project shall embrace both the water system and the sewerage system.

Nothing in this article shall be construed as prohibiting the creation and establishment of a district which shall include all or any portion of the territory of another district or districts theretofore created and established under the provisions of this article for the purpose of providing a public improvement of another class. (Ord. No. 60-7, § 4, 2-9-60; Ord. No. 64-26, § 1, 7-7-64; Ord. No. 64-50, § 1, 10-6-64; Ord. No. 65-59, § 1, 9-14-65)

Amendment note—Ord. No. 64-50, § 1, amended § 18-3(f) to add the last unnumbered paragraph. Ord. No. 65-59, § 1, further amended said unnumbered paragraph of subsection (f) by requiring the approval of freeholders of the district who are qualified electors. Previously, approval was required by the qualified electors of the district.

APPENDIX D

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR DADE COUNTY

No. 65C 2599

EDMOR PROPERTIES, INC., a Florida corporation,
Plaintiff,

vs.

METROPOLITAN DADE COUNTY, FLORIDA, a governmental subdivision of the State of Florida,
Defendant.

FINAL JUDGMENT

This cause came on for final hearing, and the Court has heard the testimony, considered the evidence and the arguments of counsel.

It affirmatively appears from the evidence that the charges for waste collection are related solely to the availability and furnishing of the waste collection and disposal service by Metro, and no part of the charge is used for the general revenues of Metropolitan Dade County; and it further appears that unoccupied premises may be exempted from such charges, in accordance with the provisions for the giving of notice by the property owner that the premises are untenanted or unoccupied, and that no charges against the plaintiff were assessed in the case of untenanted or unoccupied property, except in several instances in which the landowner failed to give notice to Metro as provided by the applicable charter provisions.

It is clear, also, that the charge for waste collection and disposal is not a tax but a charge for the availability and disposal of waste service, irrespective of the terminology used. (Turner, et al., v. Florida ex rel, Gruver, Fla. App. 3; Gleason v. Dade County, et al., Fla. App. 3). Nor, does the Court find any merit in the contention that Metro can only assess such charges after the creation of a special taxing district. It is apparent from a reading of the ordinance that Metro, as such, can levy a charge and provide a waste service, or alternatively could have proceeded with the establishment of special taxing districts, if the circumstances warrant it.

Since the availability of garbage and waste collection and disposal is provided for tenanted and occupied property, as well as for untenanted or unoccupied property, there is no denial of equal protection, and the mechanics of the ordinance satisfy the due process clause of the constitution. In short, the Court finds no constitutional infirmity in the ordinances under consideration, nor in their applicability to the plaintiff. It is, therefore,

ADJUDGED that plaintiff's complaint be, and it is hereby dismissed, at plaintiff's cost.

DONE AND ORDERED in Chambers at Jacksonville, Duval County, Florida, this 20th day of February, 1968.

/s/ Martin Sack
Judge

Copies: Carvajal and Lieberman
Thomas C. Britton

APPENDIX E

IN THE SUPREME COURT OF FLORIDA

DISTRICT COURT OF APPEAL, THIRD DISTRICT

JANUARY TERM, A. D. 1969

THURSDAY, MARCH 27, 1969

CASE NO. 38,310

EDMOR PROPERTIES, INC., ETC.,

Petitioner,

vs.

METROPOLITAN DADE COUNTY, FLORIDA, ETC.,

Respondent.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

A True Copy

TEST:
Sid J. White

SID J. WHITE
Clerk Supreme Court.

By Ella O'Neill Williams
Chief Deputy Clerk

CC: Hon. W. P. Carter
Hon. E. B. Leatherman
Messrs. Carvajal and Lieberman and
George D. Gold
Hon. Thomas C. Britton;
Attention: H. Jackson Dorney